

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CIVIL ACTION NUMBER:
IN RE: VALSARTAN PRODUCTS
LIABILITY LITIGATION **19-md-02875-RBK-KMW**

TELEPHONE CONFERENCE

Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets
Camden, New Jersey 08101
October 8, 2021
Commencing at 1:00 p.m.

B E F O R E: **THE HONORABLE THOMAS I. VANASKIE (RET.)**
SPECIAL MASTER

A P P E A R A N C E S:

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Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

1 **A P P E A R A N C E S (Continued):**

2

3 GREENBERG TRAURIG LLP
4 BY: VICTORIA DAVIS LOCKARD, ESQUIRE
5 BY: VICTORIA J. LANGTON, ESQUIRE
6 BY: GREGORY COATES, ESQUIRE
7 3333 Piedmont Road, NE, Suite 2500
8 Atlanta, Georgia 30305
9 For the Defendants, Teva Pharmaceutical Industries Ltd.,
10 Teva Pharmaceuticals USA, Inc., Actavis LLC,
11 and Actavis Pharma, Inc.

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13 **ALSO PRESENT:**

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15 Larry MacStravic, Courtroom Deputy

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1 (Proceedings called to order at 1:00 p.m.)

2 THE COURT: This is a fairly straightforward issue,
3 just one of scheduling, but I wanted to try to get it resolved
4 as quickly as possible. And I thank you for all being
5 available on such short notice to try to resolve this.

6 It came to my attention as a result of an email from
7 Ms. Goldenberg yesterday around 5:00, and then there was an
8 email earlier this morning from Ms. Lockard. And I thought,
9 let's try to get this resolved because it deals with scheduling
10 and impacts on vacations and things of that nature and the
11 scheduling of a physician's deposition.

12 I've read the emails. I don't know what more you need
13 to provide me with. I'm hoping that there's some way we can
14 get this resolved satisfactorily. But if I have to make a
15 decision, certainly that's what I'm here for.

16 Has there been any other discussion or any other
17 effort to try to get this resolved?

18 I guess I'll ask that first of you, Ms. Goldenberg.

19 MS. GOLDENBERG: Sure, Your Honor. And for the
20 record, this is Marlene Goldenberg.

21 No. There has been -- I did email defense counsel
22 once more after getting their email saying they were unwilling
23 to move the deposition to ask if they were willing to
24 reconsider their position. They told me they were not. And
25 here we are.

1 THE COURT: Yeah. Part of the problem, as I see it --
2 and then I'll hear from you, Ms. Lockard. But part of the
3 problem as I see it is this doctor canceled his appointments
4 for the day. And now -- you know, I know that's a disruption.

5 MS. GOLDENBERG: It is, Your Honor, and -- I'm sorry.
6 Go ahead.

7 THE COURT: That's all right. Go ahead.

8 MS. GOLDENBERG: It certainly is unfortunate, and it's
9 especially unfortunate in light of the fact that I told the
10 defendants from the very beginning I was unavailable on that
11 date. And I'm not really sure why they decided to tell the
12 doctor this was the date this was going to happen and it worked
13 for everyone. But I -- I feel badly for the doctor, but I
14 can't -- I'm going to be on a plane during that time.

15 MS. LOCKARD: Your Honor, if I just may be heard on
16 this, and for the record.

17 THE COURT: You certainly may.

18 MS. LOCKARD: Thank you.

19 We are not trying to ruin anyone's vacation here. You
20 know, we all work hard and deserve some time off. I understand
21 that. It's not our normal practice to be difficult on these
22 matters.

23 We do have a Court-imposed deadline of November 4th to
24 get these treaters deposed. And frankly, that was because
25 plaintiffs would not agree to anything longer.

1 But be that as it may, that's where we are. And we
2 contacted this treater. October 14th was the only date she
3 gave us. She's quite difficult to deal with, this physician.
4 We did not ask her -- you know, we did not represent that
5 plaintiff's counsel was either available nor unavailable. We
6 followed up with Ms. Goldenberg, who did -- she was very clear
7 she was not available on the 14th. And we asked, are there
8 others who could cover or are there other dates within the
9 deadline that Ms. Goldenberg could cover when she returns from
10 vacation on the 25th. We were not provided with any other
11 dates.

12 So with the deadline looming, we did not feel we could
13 unilaterally agree to disregard the Court's deadline and push
14 this, particularly given that this treater -- this physician is
15 very difficult to deal with and we needed to get this
16 scheduled.

17 So we noticed it for the only available date, with the
18 expectation that plaintiffs should have resources to cover this
19 deposition among the many lawyers they have working on this
20 case, or they could go to the Court and seek an exception,
21 which they've done.

22 That said, the physician has cleared her schedule.
23 She is asking for a 50 percent cancellation fee, which is
24 roughly \$1,875 of her typical fee.

25 So if it is to be rescheduled and the Court is to

1 allow that exception outside of the Court-imposed deadline, we
2 will make ourselves available; but in that event, we believe
3 that plaintiffs should have to pay that fee that is owing to
4 the doctor, because she did clear off her schedule.

5 So that's sort of where we are at this point.

6 THE COURT: All right. Well, let's hear now from
7 Ms. Goldenberg.

8 MS. GOLDENBERG: Yes, Your Honor.

9 And just for the record, I did actually check with my
10 partners to see if there was someone who could cover this
11 deposition, and there just isn't. We're a small firm.

12 But the cancellation fee is a problem of the
13 defendant's creation. They, again, called the doctor, noticed
14 the deposition.

15 I did email last week and asked defense counsel if
16 they would agree to me emailing the Court and asking for an
17 extension and saying it was my schedule, because it is, and
18 instead, they noticed the deposition. So there was never any
19 indication on my part that this date was going to work.

20 And to the point that we should be able to find
21 somebody else to cover this, this is different than a
22 deposition that the PSC is taking. This is a deposition of a
23 doctor who treated my personal client who I represent on an
24 individual basis. The Court would never agree to say, Teva,
25 you have to cover a deposition for Hetero because Hetero's

1 counsel is unavailable. That's not their client. And I am the
2 only person who represents this client, and my firm should be
3 the one at this deposition.

4 THE COURT: All right. Anything else, Ms. Lockard?

5 MS. LOCKARD: Only that this is one of the bellwether
6 plaintiffs, so it's not just a matter of it being a client of
7 Ms. Goldenberg. But no, I think we've made the record clear on
8 our position.

9 THE COURT: Well, I believe that plaintiffs should pay
10 the cancellation fee if they want to have this deposition taken
11 on another day or even after the November 4 deadline. I don't
12 see a need to move the November 4 deadline, and I'm not
13 inclined to do that, but would allow an exception to have the
14 deposition of this particular physician taken after the
15 November 4 deadline.

16 But it's the plaintiff's vacation schedule that is at
17 issue here. And if plaintiffs want to take -- want to get
18 on -- Ms. Goldenberg, if you want to get on that flight and
19 start your vacation on time, which I don't blame you, we all do
20 work hard and we all are entitled to vacation, but we have
21 tight deadlines in this case for very good reasons. And this
22 is a matter -- I don't think it's a matter of the defense
23 making -- from what I've been told, this physician did
24 schedule -- did clear her schedule or his schedule for this
25 date. And I've been -- it's been represented to me that this

1 physician -- as many, many physicians in my dated personal
2 experience -- can be difficult in terms of scheduling
3 depositions.

4 I just think the fair thing here is if you want to
5 take it after -- on another date and we have this 50 percent
6 cancellation fee, which is not unusual, because physicians
7 clear their days, I think it should be paid for by the
8 plaintiffs. If plaintiffs are unwilling to do that, then the
9 deposition will go forward as scheduled on the 14th of October.

10 Go ahead.

11 MS. GOLDENBERG: I'm sorry. I certainly understand
12 your position. If I may, you know, the only reason that this
13 cancellation fee was incurred was because the defendants went
14 ahead and scheduled this on a date that was never going to work
15 in the first place.

16 If that is the precedent that's being set, then
17 parties are going to be allowed to notice depositions
18 regardless of each other's schedule, and it sends a message
19 that we don't need to work together on scheduling things in the
20 future, which I think up until now we've always been really
21 good at doing. But we have moved things around for other
22 counsel's vacations. We have moved hearings, we have moved
23 scheduling conferences, and this would be the first time that
24 anyone has been forced to pay a fee for that, for something
25 that they were clear from the beginning wasn't workable.

1 THE COURT: Is this the first time that a fee has been
2 incurred as a result of moving things around?

3 MS. GOLDENBERG: I believe so. But the defendants
4 knew that this date wasn't workable, noticed it anyway, and the
5 fact that there is a fee here is only because they decided not
6 to work together for a schedule or not wait for us to jointly
7 approach the Court to seek an extension.

8 MS. LOCKARD: I have to say, though, I don't think
9 that is a fair representation, because our response was not
10 that we don't care, we're noticing it; our response was give us
11 any other date in this five-week period since we've been trying
12 to schedule this, and we got no alternative dates from
13 plaintiffs. No alternative dates, one date from the treater
14 and a deadline. I don't think this is comparable to the other
15 situations. We are always willing to work together on things,
16 but we have to be given alternatives. In this case we just
17 weren't.

18 MS. GOLDENBERG: What defendants haven't mentioned is
19 that the other dates that are available are taken up by other
20 treater depositions that are scheduled at the end of October
21 and beginning of November. And I don't think those defense
22 attorneys are on the call right now, but I get back the 25th.
23 There are about four business days between then and the
24 deadline. And on two of those dates there are already
25 depositions scheduled, so it's not like we've been sitting

1 around, not doing anything. And this date wasn't requested
2 until the end of the September in the first place.

3 I can promise you, there's been no lack of diligence.
4 I have personally taken six depositions of -- in this MDL in
5 the last two weeks.

6 THE COURT: I know there's been no lack of diligence
7 on either side. But you had a looming deadline.

8 Is it true that you didn't suggest another date? I
9 know you didn't have another date available before November
10 4th, but did you float out there the possibility of a date
11 after November 4th?

12 MS. GOLDENBERG: I did. I provided -- I'm sorry.

13 Yes, Your Honor, I did. I provided two or three
14 additional dates after the deadline, and those were rejected by
15 defendants.

16 MS. LOCKARD: Because they were after the deadline.
17 And I don't feel comfortable unilaterally agreeing to do things
18 after deadlines that Judge Kugler has issued on the scheduling
19 order.

20 THE COURT: Sure. I understand that.

21 No. My ruling stands. I think the deposition may be
22 rescheduled, and you'll have an exception to take it after the
23 November 4 deadline, but plaintiffs will have to pay the
24 cancellation fee.

25 Anything else?

1 MS. GOLDENBERG: No, Your Honor. I appreciate you
2 being available for the call.

3 MS. LOCKARD: Not from us, Your Honor. Thank you.

4 THE COURT: All right. Do you need an order --

5 MS. GOLDENBERG: No, I don't think that's necessary.

6 THE COURT: -- or is this sufficient?

7 Okay. This will be sufficient.

8 All right. I expect that you'll confer to get another
9 date, and the plaintiffs will pay the cancellation or the
10 deposition will occur on the 14th of October.

11 Thank you very much.

12 (Proceedings concluded at 1:15 p.m.)

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16 I certify that the foregoing is a correct transcript
17 from the record of proceedings in the above-entitled matter.

18

19 /S/ Ann Marie Mitchell, CCR, CRR, RDR, RMR, RPR
20 Court Reporter/Transcriber

21 October 12, 2021
22 Date

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<p>\$1,875 [1] - 5:24 /S [1] - 11:19 12 [1] - 11:21 14th [4] - 5:2, 5:7, 8:9, 11:10 1:00 [1] - 3:1 1:15 [1] - 11:12 2021 [1] - 11:21 25th [2] - 5:10, 9:22 4 [4] - 7:11, 7:12, 7:15, 10:23 4th [3] - 4:23, 10:10, 10:11 50 [2] - 5:23, 8:5 5:00 [1] - 3:7 able [1] - 6:20 above-entitled [1] - 11:17 additional [1] - 10:14 agree [4] - 4:25, 5:13, 6:16, 6:24 agreeing [1] - 10:17 ahead [4] - 4:6, 4:7, 8:10, 8:14 allow [2] - 6:1, 7:13 allowed [1] - 8:17 alternative [2] - 9:12, 9:13 alternatives [1] - 9:16 Ann [1] - 11:19 anyway [1] - 9:4 appointments [1] - 4:3 appreciate [1] - 11:1 approach [1] - 9:7 attention [1] - 3:6 attorneys [1] - 9:22 available [8] - 3:5, 5:5, 5:7, 5:17, 6:2, 9:19, 10:9, 11:2 badly [1] - 4:13 basis [1] - 6:24 beginning [3] - 4:10, 8:25, 9:21 bellwether [1] - 7:5 between [1] - 9:23 blame [1] - 7:19 business [1] - 9:23 canceled [1] - 4:3 cancellation [7] - 5:23, 6:12, 7:10, 8:6, 8:13, 10:24, 11:9 care [1] - 9:10 case [3] - 5:20, 7:21, 9:16 CCR [1] - 11:19 certainly [4] - 3:15, 4:8, 4:17, 8:11 certify [1] - 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